

## TITLE 2. FAIR POLITICAL PRACTICES COMMISSION

NOTICE IS HEREBY GIVEN that the Fair Political Practices Commission (the “Commission”), under the authority vested in it under the Political Reform Act (the “Act”)<sup>1</sup> by Section 83112 of the Government Code, proposes to adopt, amend, or repeal regulations in Title 2, Division 6 of the California Code of Regulations. The Commission will consider the proposed regulation at a public hearing on or after **October 14, 2010**, at the offices of the Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, California, commencing at approximately **10:00 a.m.** Written comments must be received at the Commission offices no later than **5:00 p.m.** on **October 12, 2010**.

### BACKGROUND/OVERVIEW:

Regulation 18225(b)(2) defines the term “expressly advocates,” found in Government Code Sections 82031 and 85310, to include specific words within a communication urging a vote for or against a particular candidate or measure in an upcoming election. The final 26 words of the regulation also include a communication lacking such specific words, if the communication “taken as a whole, unambiguously urges a particular result in an election.”

In late 2002, *The Governor Gray Davis Committee v. American Taxpayer Alliance*, 102 Cal. App.4<sup>th</sup> 449 (2002), a lawsuit to which the Commission was not a party, found that these final 26 words violated the U.S. Constitution. Notified of the court’s ruling, the Commission in May 2003 voted to suspend enforcement of the affected portion of Regulation 18225(b)(2), pending clarification of the constitutional sufficiency of its language. At the time, the U.S. Supreme Court was expected to decide the question in the following year, but the Supreme Court’s full exposition on the subject was spread among three opinions, the last of which was published in early 2010. These opinions now conclusively establish that the *Davis* Court was incorrect in its interpretation of the U.S. Constitution, and that the Commission may lawfully define the term “expressly advocates” to the extent found lawful under these recent Supreme Court opinions.

The Commission therefore proposes to amend Regulation 18225(b)(2) to reflect the Supreme Court’s recent teaching, and to provide examples illustrating the kind of communication that, without use of specific words, nonetheless “expressly advocates” a particular result in an election, within the meaning of the Political Reform Act of 1974, as amended.

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<sup>1</sup> The Political Reform Act is contained in Government Code Sections 81000 through 91014. All statutory references are to the Government Code, unless otherwise indicated. The regulations of the Fair Political Practices Commission are contained in Sections 18110 through 18997 of Title 2 of the California Code of Regulations. All regulatory references are to Title 2, Division 6 of the California Code of Regulations, unless otherwise indicated.

REGULATORY ACTION:

*Amend 2 Cal. Code Regs. Section 18225(b)(2):*

The proposed regulatory action would amend Regulation 18225(b)(2).

FISCAL IMPACT STATEMENT:

Fiscal Impact on Local Government. This regulatory action will have no fiscal impact on any local entity or program.

Fiscal Impact on State Government. This regulatory action will have no fiscal impact on any state entity or program.

Fiscal Impact on Federal Funding of State Programs. This regulatory action will have no fiscal impact on the federal funding of any state program or entity.

AUTHORITY – Government Code Section 83112 provides that the Fair Political Practices Commission may adopt, amend, and rescind rules and regulations to carry out the purposes and provisions of the Political Reform Act.

REFERENCE – The purpose of this regulation is to implement, interpret and make specific Government Code Sections 82031 and 85310.

CONTACT – Any inquiries should be made to Lawrence T. Woodlock, Fair Political Practices Commission, 428 J Street, Suite 800, Sacramento, CA 95814; telephone (916) 322-5660 or 1-866-ASK-FPPC. Proposed regulatory language can be accessed at: <http://www.fppc.ca.gov/index.php?id=247#2>.

ADDITIONAL COMMENTS – After the hearing, the Commission may adopt, amend or repeal the regulation if it remains substantially the same as described or as in the text originally made available to the public. The Commission may make changes to the regulation before its adoption, amendment, or repeal.